

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

<b>KANE AUTOMOTIVE GROUP, INC.,</b>	<b>No. 24645-1-III</b>
<b>a Washington corporation,</b>	)
<b>d/b/a SPOKANE KIA,</b>	)
	) <b>Division Three</b>
<b>Respondent,</b>	)
	)
<b>v.</b>	) <b>UNPUBLISHED OPINION</b>
	)
<b>VICKIE DETTLING,</b>	)
	)
<b>Appellant.</b>	)
	)

Kulik, C.J. — After negotiations over a dispute about a car purchase failed, Spokane Kia brought an action against Vickie Dettling for replevin and conversion. Spokane Kia moved for summary judgment and sanctions against Ms. Dettling for failing to comply with court orders. The court granted summary judgment and imposed sanctions. Ms. Dettling appeals, asserting the trial court erred by: (1) granting summary judgment in favor of Spokane Kia, (2) imposing sanctions, (3) denying a jury trial, and (4) denying her right to an attorney’s presence. We affirm the trial court in all respects.

## FACTS

Vickie Dettling went to Spokane Kia to buy a silver Kia Sportage with four wheel drive, a CD player, air conditioning, and cruise control. There were no silver Sportages on the lot, so Ms. Dettling entered into an agreement to purchase a beige Sportage. Ms. Dettling discovered that the beige Sportage did not have cruise control. Ms. Dettling returned to Spokane Kia and requested a Sportage with cruise control.

Ms. Dettling then spoke with David Gilliver, the general manager, who said he would get her the car she wanted, but she would have to wait a few days. In the meantime, Mr. Gilliver told her she could drive the beige Sportage. On the day her new car was supposed to be delivered, the car was not on the lot. Spokane Kia offered Ms. Dettling a pewter Sportage and said it could add cruise control. Ms. Dettling agreed, as long as the addition could be done in two hours. Spokane Kia tore up the contract for the beige Sportage and drew up a new one for the pewter Sportage. Ms. Dettling signed the second contract. The pewter Sportage was not ready when Ms. Dettling arrived at 5:00 p.m. Ms. Dettling, frustrated from waiting for seven hours, drove home in the beige Sportage.

Ms. Dettling informed Spokane Kia that she no longer wanted the pewter Sportage

and that she either wanted her trade-in Subaru back or a refund. Spokane Kia stated that she had signed a contract for the pewter Sportage, and she could not have her Subaru back.

In December 2002, Spokane Kia served Ms. Dettling with a summons and complaint for replevin and conversion of personal property. Ms. Dettling contacted Spokane Kia's attorney and agreed to return the beige Sportage and pick up the pewter Sportage on December 24, two days before Spokane Kia's hearing under the replevin statute. Spokane Kia agreed to cancel the hearing.

On April 28, 2005, Spokane Kia filed a motion for summary judgment regarding the issue of conversion. Following hearings on summary judgment on June 1 and July 13, 2005, the court found that Ms. Dettling willfully retained possession of the beige Sportage and thereby deprived the dealership of possession and use of the vehicle without lawful justification.

Procedurally, the court found that Ms. Dettling also filed her answer and counterclaim on June 10, 2003, but she failed to serve the pleading. Ms. Dettling also failed to comply with the court's order on November 7, 2003, to pay sanctions of \$600 for discovery abuse. Furthermore, Ms. Dettling had previously been admonished by the court on the necessity of providing timely responses to discovery requests. Ms. Dettling

failed to produce records and other requested material by the discovery cut-off date.

During the course of the litigation, three different attorneys represented Ms. Dettling.

The trial court granted summary judgment in favor of Spokane Kia and ordered Ms. Dettling to pay the previously-awarded sanctions of \$600. The trial court sanctioned her and imposed an additional \$750 for fees associated with Spokane Kia bringing its motion regarding discovery. The court granted in part and denied in part Spokane Kia's motion for summary judgment concluding that any claim for rescission or any claim under the Automobile Dealers and Manufacturers Act, RCW 46.70.005, by Ms. Dettling was dismissed as time barred. The court also concluded that Ms. Dettling could bring a claim under the Consumer Protection Act, chapter 19.86 RCW, as long as the claim could not have been brought under the Automobile Dealers and Manufacturers Act. The trial court concluded that Ms. Dettling committed conversion of the beige Sportage and that the conversion injured Spokane Kia in the amount of \$2,660.

Ms. Dettling appeals.

#### ANALYSIS

Ms. Dettling lists four assignments of error. She asserts the trial court erred by imposing sanctions, denying a jury trial, denying her right to have an attorney present,

and granting summary judgment in favor of Spokane Kia. Spokane Kia asserts that Ms. Dettling's brief contains no meaningful argument, analysis, or supporting authority and, therefore, this court cannot consider Ms. Dettling's arguments.

Pro se litigants are held to the same standards as attorneys. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). The court "will not consider claims insufficiently argued by the parties." *State v. Elliott*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990). The argument section of a brief should contain citations to legal authority and references to the record. RAP 10.3(a)(6).

In Ms. Dettling's argument section of her brief, she cites four statutes: RCW 9A.60.030, RCW 9.62.010, RCW 4.84.185 and RCW 7.64.010. She cites no other legal authority in her argument section.

RCW 9A.60.030 is a criminal statute for fraud entitled "Obtaining a signature by deception or duress." RCW 9.62.010 is a criminal statute for malicious prosecution and not applicable here.

RCW 4.84.185 is entitled "Prevailing party to receive expenses for opposing frivolous action or defense." Lastly, RCW 7.64.010 is a replevin statute that allows the plaintiff to immediately recover his or her personal property after a hearing. Ms. Dettling asserts that Spokane Kia deprived her of the use of her Subaru when they refused to

return it to her. She asserts that Spokane Kia violated her right to self-help possession under RCW 7.64.010.

None of the statutes cited by Ms. Dettling support her assignments of error. Ms. Dettling has failed to provide any relevant legal authority supporting her position. Therefore, we cannot address her assignments of error and must affirm the trial court.

Spokane Kia requests attorney fees. A substantially prevailing party on review can recover attorney fees if the law allows. RAP 18.1. Attorney fees may be recovered when authorized by a contract. *Pa. Life Ins. Co. v. Dep't of Employment Sec.*, 97 Wn.2d 412, 413, 645 P.2d 693 (1982).

Here, Spokane Kia directs the court to an exhibit following the declaration of David Gilliver, the general manager for Spokane Kia. Exhibit A appears to be two pages of the sales contract for the beige Sportage. The second page contains language allowing Spokane Kia to recover attorney fees. Exhibit B appears to be the first page of the sales contract for the pewter Sportage. There is no second page containing language allowing Spokane Kia to collect attorney fees. The record does not contain full versions of either sales contract.<sup>1</sup> Because the contract for the beige Sportage was torn up when the

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<sup>1</sup> Ms. Dettling's brief includes both the contract for the beige Sportage and the contract for the pewter Sportage, in their entirety. Notably, they do not look the same as

contract for the pewter Sportage was drawn up and signed, the controlling contract here is the one for the pewter Sportage. The record does not include a contract allowing Spokane Kia to recover attorney fees; therefore, we deny Spokane Kia attorney fees.

Spokane Kia also requests that this court impose sanctions on Ms. Dettling under RAP 18.9(a) for filing an appeal to cause delay or that is frivolous. Spokane Kia asserts that a reasonable person would have adhered to at least some of the court rules. In Spokane Kia's view, Ms. Dettling failed to adhere to court rules or court orders and, therefore, should have to pay Spokane Kia its fees for defending this appeal.

An appeal is frivolous if it presents no debatable issues on which reasonable minds may differ and is so totally without merit that there is no reasonable probability of reversal. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998) (quoting *Presidential Estates Apartment Assocs. v. Barrett*, 129 Wn.2d 320, 330, 917 P.2d 100 (1996)). Here, we do not address Ms. Dettling's arguments because she failed to provide proper legal authority or citations to support her arguments. However, her arguments may not have been frivolous. Furthermore, arguing that Ms. Dettling failed to adhere to court rules does not make the appeal frivolous. Court rules are

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the pages of contracts contained in the clerk's papers. But they do contain the language allowing Spokane Kia to recover attorney fees if the buyer defaults. However, appendices in briefs are not part of the record.

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procedural, but whether an appeal is frivolous is determined by the substantive arguments of the parties. We decline to impose sanctions.

We affirm the trial court in all respects.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

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Brown, J.

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Korsmo, J.